

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM.**

**Complaint No. : 5173-2023  
Date of Decision: 25.03.2026**

Dr. Neeraj Kumar Sharma and Dr. Mallika Dixit, both residents of Flat No. K-203, Tower-K, Palm Drive, Sector-66, Golf Course Extension Road, near Badshahpur Chowk, Gurugram-122101, Haryana.

**.....Complainants.**

**Versus**

Emaar MGF Land Ltd. (Emaar India Ltd.) (Through its Managing Director and other Directors). Address: Ece House, 28, Kasturba Gandhi Marg, P, New Delhi 110001 and Office address: Emaar Business Park, Mehrauli Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurugram, Haryana-122002.

**.....Respondent**

**APPEARANCE**

For Complainants: Dr. Neeraj Kumar Sharma (complainant) in person.  
For Respondent: Mr. Dhruv Rohatgi, Advocate.

**ORDER**

This is a complaint filed by Dr. Neeraj Kumar Sharma and Dr. Mallika Dixit (allottees) under Section 31 of The Real Estate

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(Regulation and Development), Act 2016 (in brief Act of 2016), against Emaar MGF Land Ltd. (Emaar India Ltd.) (promoter).

2. According to complainants, they booked flat in Emaar Palm gardens i.e. a project developed by respondent, on 14.11.2011. A Builder Buyer Agreement (BBA) was executed with the respondent on 12.12.2011. They were allotted a Unit No. PGN-12-0203 admeasuring 1900 Sq. feet situated in Sector-83, Gurugram, Haryana. The date of start of construction by builder was 30.11.2012 and the builder (respondent) was supposed to deliver the possession of the said property by 01.03.2016 as BBA.

3. That the Haryana Real Estate Regulation Authority (in brief the Authority) vide order dated 21.01.2020 directed the respondent (builder) to deliver possession of their unit with all promised amenities and also to pay interest amount at the prescribed rate of interest i.e. 10.20% per annum for every month w.e.f. 01.03.2016 till the date of offer of possession. The respondent overlooked the order of the Authority and avoided to pay any amount to them (complainants).

4. That they (complainants), aggrieved by the delay in handing over physical possession of the flat due to delay in rectifications of snags by respondent as observed & documented on

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09.01.2020 in first visit of flat and encroachment removal, preferred an execution application on 05.10.2020 No. RERA-GRG-2813-2020 to enforce the order of the Authority, Gurugram dated 21.01.2020, which was uploaded on the website on 16.03.2020. After the Authority's intervention, actual physical handing over of flat was given by the respondent on 06.11.2020, after rectification of snags and removal of encroachments.

5. That the respondent, instead of complying with the above-mentioned order of the Authority, Gurugram, filed an Appeal no. (349 of 2020) before the Hon'ble Appellate Tribunal. The Appellate Tribunal, Chandigarh dismissed said appeal of respondent on 07.04.2022 and gave instructions to the respondent to enforce order dated 21.01.2020 of the Authority, Gurugram.

6. That they(complainants) submitted an application to the Authority for rectification/amendment of said order under Section 39 of the Act, which was dismissed by the Authority vide order dated 23.05.2023. They(complainants) filed an appeal (No.342 of 2023) before the Hon'ble Appellate Tribunal, Chandigarh on 14.06.2023. The Appellate Tribunal allowed to withdraw said appeal and directed them (complainants) to submit application in office of Adjudicating Officer, Gurugram, under

  
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Section 31 read with Section 71 of the Act of 2016, seeking compensation.

7. Contending all this, complainants have sought following reliefs: -

- I. to direct the respondent for DPC till handing over of physical possession of flat w.e.f. 29.10.2019 to 06.11.2020.
- II. to direct the respondent for DPC for delay in start of construction w.e.f. 14.11.2011 to 30.11.2012 (381 days).
- III. to direct the respondent for refund for reduction in Carpet Area -21.67% of super area (411.73 sq. feet) with interest @ 10.20%.
- IV. Delay in execution of conveyance deed (Registry)-42 months.
- V. to direct the respondent for refund with interest @ 10.20% of VAT, PLC, Electrification charges, IFMS Administrative & miscellaneous charges, service tax with interest @ 10.20% as mentioned in last instalment demand letter dated 29.10.2019.
- VI. to direct the respondent for allotment of basement car parking costing Rs.3 lacs.
- VII. to direct the respondent for compensation for mental agony and harassment, Rs.50 lacs.
- VIII. to direct the respondent for compensation for litigation (legal and miscellaneous expenses), Rs.6 lacs.

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- IX. to direct the respondent for compensation for poor quality of construction.
- X. Any other relief, which this Court may deem fit and proper be also granted in the interest of justice.

8. The respondent contested claim of complainants by filing a written reply. It is denied that the subject matter of the instant complaint/claim falls within the jurisdiction of Adjudicating Officer. Present complaint is alleged as not maintainable before the Adjudicating Officer. The complainants are seeking compensation for delay in possession (DPC), which relief can only be granted by the Authority. Moreover, the complainants have already received DPC amounting to Rs.38,11,160/- pursuant to the order dated 21.01.2020 passed by the Authority in complaint no. 1794 of 2019 and modified by the Hon'ble Appellate Tribunal in appeal no. 349 of 2020 decided on 07.04.2022.

9. That the Adjudicating Officer cannot modify orders passed by the Authority or Hon'ble Tribunal. The reliefs claimed by the complainants amount to reopening an already concluded dispute between the parties, which has attained finality and hence cannot be granted to the complainants.

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10. That the complainants vide application form dated 14.11.2011 applied to the respondent for provisional allotment of a unit in the project. The complainants in pursuance of the aforesaid application form, were allotted an independent unit bearing no. PGN-12-0203, located on the 2<sup>nd</sup> Floor, in the project vide provisional allotment letter dated 26.11.2011. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration, for the unit in question.

11. That the complainants had voluntarily and consciously executed Buyer's Agreement dated 12<sup>th</sup> of December, 2011 with the respondent. The Hon'ble Appellate Tribunal has only given liberty to the complainants to move the appropriate authority for compensation and not to seek DPC or refund, which can only be granted by the Hon'ble Authority.

12. Stating all this, the respondent prayed for dismissal of the complaint.

13. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

14. Factual matrix i.e. allotment of unit PGN-12-0203 admeasuring 1900 square feet in Sector-83, Gurugram, execution of BBA dated 12.12.2011 and due date of possession being

  
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01.03.2016 did not remain in dispute. It is also not denied during deliberations that actual physical possession of the unit was offered by the respondent on 06.11.2020 and it was received by the complainants on the same day.

**Relief No.1.**

15. Admittedly, the complainants filed a complaint bearing No. (1794/2019) before the Authority, which was allowed vide order dated 21.01.2020. Aggrieved by the said order, the respondent preferred an appeal and the Hon'ble Appellate Tribunal was pleased to dismiss the appeal finding no merits in it. Through order dated 21.01.2020 (referred above), the Authority directed the respondent to pay interest to the complainants at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 09.11.2015 till offer of the possession.

16. It is contended by the complainant (Dr. Neeraj Kumar Sharma) that as per law, they (complainants) were entitled for DPC till actual possession is handed over to them. But the Authority allowed DPC till offer of the possession. They (complainants) filed an application before the Authority seeking modification in said order, but their request was declined. On an appeal filed by them,

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Hon'ble Appellate Tribunal asked them to approach this Forum (AO) seeking compensation and hence, they have approached this Forum, by filing complaint in hands.

17. True, as per proviso added to Sub Section (1) of Section 18 of the Act of 2016, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, **till handing over of the possession**, at such rate as may be prescribed. When the Authority has allowed interest till offer of possession only and said order has become final, this Forum cannot sit in appeal against the order passed by the Authority. Moreover, as described earlier, the complainants applied to the Authority seeking modification in that order, which was declined and an appeal filed against that order was dismissed as withdrawn. In this way, when the complainants have already been allowed DPC by the Authority, there is no reason to grant compensation for delay in handing over possession. It is worth mentioning here that Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, prescribes that "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate + 2%. Provision to award interest 2% more than SBI highest marginal cost of lending rate

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amounts to compensation for a buyer for delay in completion/handing over of the possession.

**Relief No.2**

18. When the complainants have already been allowed DPC for delay in handing over of the possession, it is not of much importance that there was delay on the part of the promoter(respondent), in start of construction of building. No reason to allow any compensation on this count.

**Relief No.3**

19. None from the parties put on file copy of BBA, to verify as to what was the carpet area of the unit in question or what was its super area. According to the complainants, their unit was admeasuring 1900 square feet. During arguments, it was pointed out that it was super area of the unit. Although it is averred by the complainants that carpet area calculated according to BBA was 1184.31 square feet and the same is handed over by the builder to them. As stated earlier, no copy of BBA has been filed to verify this fact.

20. Further, according to the complainants, there was reduction of 715.69 square feet i.e. 37.67% of super area. The complainants have mentioned about an order passed by the

  
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Authority stating that permissible apartment carpet area must be 84% of the super area. In absence of any agreement between the parties in this regard, observation, if any, given by the Authority in some other case is not a precedent and not binding upon the parties.

21. The complainants have thus failed to prove reduction in the carpet area as claimed by them. No reason to allow any compensation in this regard.

**Relief No.4**

22. As per Section 17(1) of the Act of 2016, the promoter is obliged to execute/register Conveyance Deed in favour of allottee----- within specified period as per sanctioned plan provided under the local laws. Provisio added here states that in absence of any local law, conveyance deed in favour of the allottee----- shall be carried out by promoter **within three months** from the date of issue of Occupancy Certificate. It is not clear as to when the respondent received Occupancy Certificate about the project in question.

23. In view of Section 71 of the Act, this Forum (AO) has jurisdiction to adjudge compensation under Sections 12,14,18 & 19 of the Act of 2016. Even if the Conveyance Deed was not executed

  
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by the promotor in time, this Forum has no jurisdiction to entertain a complaint seeking compensation in this regard, which is violation of Section 17 of the Act.

**Relief No.5**

24. It is submitted by the complainant (Dr. Neeraj Kumar Sharma) that the respondent verbally agreed to allow a second car parking in his favour, depending upon its availability. An email was also sent to him by the respondent in this regard.

25. Learned counsel for the respondent denied that there was any such agreement between the parties, where his client i.e. the respondent had agreed to allot a second car parking. Even otherwise, according to him, offer was dependent upon availability of car parking. When no such car parking is available, his client cannot be compelled to allot second car parking.

26. Admittedly, there was no written agreement, where the respondent agreed to allot second car parking to the complainants. Moreover, the complainants failed to prove that car parkings are available and the respondent is deliberately not allotting such parking in their favour. In this situation, there is no reason to direct the respondent to allow second car parking or to award compensation in this regard.

  
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**Relief Nos.6 to 9**

27. I think it appropriate to take up relief Nos. 6 to 9 together, all these being co-related. It is urged by the complainant (Dr. Neeraj Kumar Sharma) that when possession of subject unit was offered to them, there were certain deficiencies in it. He relied upon several correspondences exchanged between the parties through emails, copies of which have been placed on the file. The exchange of such communication and genuineness of emails placed on the file are not denied by the counsel for respondent during deliberations. In response to letter written by the complainants, it was admitted by the respondent through email stated to have been received on 25.02.2020 that there were deficiencies and their team had been working on the same. The representative of the respondent mentioned that they have requested their senior colleagues, to give personal attention to the unit of the complainants. The snags have been corrected. However, there remained seepage in one area which will take 10-15 days to get dried of. Apparently handing over possession was delayed due to removal of these deficiencies.

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28. Through letter/email dated 12.06.2020, the complainant (Dr. Neeraj Kumar Sharma) pointed out following deficiencies:

- i. In one room there was seepage which is properly rectified but the plaster of wall is uneven.
- ii. Tiles above Granite counter in kitchen were having cracks and need replacement.
- iii. Floor and wall tiles in washrooms including servant room were not properly fitted. Many tiles were having cracks and chipped in washrooms and kitchen with black colour gaps.
- iv. The flooring of drawing room, dining room, kitchen, servant room are uneven having with black gaps between tiles.
- v. In drawing room balcony, kitchen balcony, the plaster from outside is missing and require proper painting and cleaning. The area next to balcony of drawing room, guest room and kitchen was not properly painted and require cleaning.

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- vi. Deep cleaning as per handing over team was not done properly and handing over team need few days for deep cleaning.
- vii. White wash painting marks were found in master bedroom in almirah area and floor was uneven.
- viii. Handover team members were shown the window panes, which were not properly clean and was having marks of white wash paint. Team members said during maintenance Julla spiderman will clean it.
- ix. Locks of all the rooms and entrance door were found rusted and need immediate replacement.


29. In letter dated 19.06.2020, the complainant (Dr. Neeraj Kumar Sharma) was informed that the team of the respondent was attending and the apartment will be ready to be handed over (physically) possession by 30<sup>th</sup> June 2020. During the arguments, it was admitted that deficiencies were removed and the entire work was done by the respondent. The complainants had not to bear any cost of the same. As per complainants, despite all this, for delay occurred in this regard, they (complainants) suffered physical and mental harassment and hence are entitled for compensation.

  
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30. Apparently, the complainants were deprived of their unit, despite making payment of entire sale consideration. According to them, they had to run from pillar to post to get their unit completed, even if delayed. All this caused physical harassment and mental agony to them. Keeping in view facts of this case and circumstances of the complainants, the same are allowed a sum of **Rs.2 lakhs as compensation for physical harassment and mental agony.**

31. The complainants have prayed for Rs. 6 lakhs as legal expenses. No court fee is required to be paid to the Authority, while filing such complaint. Even then, the complainants are allowed a sum of Rs.50,000/- as cost of litigation.

32. The complainants have prayed for refund with interest @ 10.20% of VAT, PLC, Electrification charges, IFMS Administrative & Miscellaneous charges, service tax. Learned counsel for the respondent contends that said charges/levy were responsibility of allottees to pay as per agreement. As stated earlier, none from parties put on file copy of BBA or any other agreement. Onus to prove this fact was upon the complainants but same did not adduce any evidence. Claim in this regard is thus declined.


  
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33. So far as allegations of poor quality of construction is concerned, no evidence is adduced by the complainants, to prove that the quality of construction done by the respondent was poor. No compensation can be granted on this count and the request in this regard is also declined.

34. The complaint is thus disposed of, with the direction to the respondent to pay the aforementioned amounts of compensation along with interest at the rate of 10.85% per annum from the date of this order, till realization of amount.

35. File be consigned to record room.

Announced in open court today i.e. on **25.03.2026**.

  
(Rajender Kumar)  
Adjudicating Officer,  
Haryana Real Estate  
Regulatory Authority,  
Gurugram.